

The Weekly Standard

VOL. XXXII.

The Weekly Standard.

W. W. HOLDEN. J. W. HOLDEN.
W. W. HOLDEN & SON,
Editors of the Standard, and authorized publishers
of the Laws of the United States.

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Letters must be addressed to
W. W. HOLDEN & SON,
Raleigh, N. C.

The President's Veto Message.

To the Senate of the United States:

I have examined with care the bill which originated in the Senate, and has been passed by the two Houses of Congress, to amend an act entitled "An act to establish a bureau for the relief of freedmen and refugees," and for other purposes. Having, with much regret, come to the conclusion that it would not be consistent with the public welfare to give my approval to the measure, I return the bill to the Senate with my objections to its becoming a law. I might call to mind, in advance of these objections, that there is no immediate necessity for the proposed measure. The act to establish a bureau for the relief of freedmen and refugees, which was approved in the month of March last, has not yet expired. It was thought stringent and extensive enough for the purpose in view, in time of war. Before it ceases to have effect, further experience may assist to guide us to a wise conclusion as to the policy to be adopted in time of peace.

I share with Congress the strongest desire to secure to the freedmen the full enjoyment of their freedom and their property, and their entire independence and equality in making contracts for their labor; but the bill before me contains provisions which, in my opinion, are not warranted by the Constitution, and are not well suited to accomplish the end in view.

The bill proposes to establish, by authority of Congress, military jurisdiction over all parts of the United States containing refugees and freedmen. It would, by its very nature, apply with most force to those parts of the United States in which the freedmen most abound; and it expressly extends the existing temporary jurisdiction of the Freedmen's Bureau, with greatly enlarged powers, over those States "in which the ordinary course of judicial proceedings has been interrupted by the rebellion." The source from which this military jurisdiction is to emanate is none other than the President of the United States, acting through the War Department and the Commissioner of the Freedmen's Bureau. The agents to carry out this military jurisdiction are to be selected either from the army or from civil life; the country is to be divided into districts and sub-districts, and the number of salaried agents to be employed may be equal to the number of counties or parishes in all the United States where freedmen and refugees are to be found.

The subjects over which this military jurisdiction is to extend, in every part of the United States, include protection to "all employees, agents, and officers of the Bureau in the exercise of the duties imposed" upon them by the bill. In eleven States it is further to extend over all cases affecting freedmen and refugees discriminated against "by local law, custom, or prejudice." In those eleven States the bill subjects any white person who may be charged with depriving a freedman of "any civil rights or immunities belonging to white persons" to imprisonment or fine, or both, without, however, defining the "civil rights and immunities" which are thus to be secured to the freedman by military law. This military jurisdiction also extends to all questions that may arise respecting contracts. The agent, who is thus to exercise the office of a military judge, may be a stranger, entirely ignorant of the laws of the place, and exposed to the errors of judgment to which all men are liable. The exercise of power, over which there is no legal supervision, by so vast a number of agents as are contemplated by the bill must, by the very nature of man, be attended by acts of caprice, injustice, and passion.

The trials having their origin under this bill are to take place without any intervention of a jury, and without any fixed rules of law or evidence. The rules which officers are to be "heard and determined" by the numerous agents are such rules and regulations as the President, through the War Department, shall prescribe. No previous presentation is required, nor any indictment charging the commission of a crime against the laws; but the trial must proceed on charges and specifications. The punishment will be not what the law declares, but such as a court-martial may think proper. And from these arbitrary tribunals there lies no appeal, no right of error to any of the courts in which the Constitution of the United States vests exclusively the judicial power of the country. While the territory and the classes of actions and offenses that are made subject to this measure are so extensive, the bill itself, should it become a law, will have no limitation in point of time, but will form a part of the permanent legislation of the country. I cannot reconcile a system of military jurisdiction of this kind with the words of the Constitution which declares that "no person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land and naval forces, or in the militia when in actual service in time of war or public danger," and that "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State or district wherein the crime shall have been committed." The safeguards which the experience and wisdom of ages taught our fathers to establish as securities for the protection of the innocent, the punishment of the guilty, and the equal administration of justice, are to be set aside, and for the sake of a more vigorous interposition, in behalf of justice, we are to take the risk of the many acts of justice that would necessarily follow from an almost countless number of agents, established in every parish or county in nearly a third of the States of the Union, over whose decisions there is to be no supervision or control by the Federal courts. The power that would be thus placed in the hands of the President is such as in time of peace certainly ought never to be entrusted to any one man.

If it be asked whether the creation of such a tribunal within a State is warranted as a measure of war, the question immediately presents itself, whether we are still engaged in war? Let us not unnecessarily disturb the commerce, and credit, and industry of the country by declaring to the American people and to the world, that the United States are still in a condition of civil war. At present there is no part of our country in which the authority of the United States is disputed. Offenses that may be committed by individuals should not work a forfeiture of the rights of whole communities. The country has returned or is returning to a state of peace and industry, and the rebellion is in fact at an end. The measure, therefore, seems to be inconsistent with the actual condition of the country as it is at variance with the Constitution of the United States.

If, passing from general considerations, we examine the bill in detail, it is open to weighty objections.

In time of war it was eminently proper that we should provide for those who were passing suddenly from a condition of bondage to a state of freedom. But this bill proposes to make the Freedmen's Bureau, established by the act of 1865 as one of many great and extraordinary military measures to suppress a formidable rebellion, a permanent branch of the public administration, with its powers greatly enlarged. I have no reason to suppose, and I do not understand it to be alleged, that the act of March, 1865, has proved deficient for the purpose for which it was passed, although at that time, and for a considerable period thereafter, the Government of the United States remained unacknowledged in most of the States whose inhabitants had been involved in the rebellion. The institution of slavery, for the military destruction of which the Freedmen's Bureau was called into existence as an auxiliary, has been already effectually and finally abrogated throughout the whole country by an amendment of the Constitution of the United States, and practically its eradication has received the assent and concurrence of most of those States in which it at any time had an existence. I am not, therefore, able to discern in the condition of the country anything to justify an apprehension that the powers and agencies of the Freedmen's Bureau, which were effective for the protection of freedmen and refugees during the actual continuance of hostilities and the African servitude, will now, in a time of peace and after the abolition of slavery, prove inadequate to the same proper ends. If I am correct in these views there can be no necessity for the enlargement of the powers of the Bureau, for which provision is made in the bill.

The third section of the bill authorizes a general and unlimited grant of support to the destitute and suffering refugees and freedmen, their wives and children. Succeeding sections make provision for the rent or purchase of landed estates for freedmen, and for the erection for their benefit of suitable buildings for asylums and schools, the expenses to be defrayed from the treasury of the whole people. The Congress of the United States has never before thought itself empowered to establish asylums, beyond the limits of the District of Columbia, except for the benefit of our disabled soldiers and sailors. It has never founded schools for any class of

our own people—not even for the orphans of those who have fallen in the defence of the Union, but have left the care of education to the much more competent and efficient control of the States, of communities, of private associations, and of individuals. It has never deemed itself authorized to expend the public money for the rent or purchase of houses for thousands, not to say millions, of the white race who are honestly toiling from day to day for their subsistence. A system for the support of indigent persons in the United States was never contemplated by the authors of the Constitution; nor can any good reason be advanced why, as a permanent establishment, it should be founded for one class or color of our people more than for another.

Pending the war, many refugees and freedmen received support from the Government; but it was never intended that they should thereafter be fed, clothed, educated, and sheltered by the United States. The idea on which the slaves were assisted to freedom was that on becoming free they would be a self-sustaining people. Any legislation that shall imply that they are not expected to attain a self-sustaining condition must have a tendency injurious alike to their character and their prospects. The appointment of an agent for every county and parish will create an immense patronage, and the expense of the numerous officers and their clerks, to be appointed by the President, will be a great beginning, with a tendency steadily to increase.

The appropriations asked by the Freedmen's Bureau, as now established, for the year 1866, amount to \$11,745,000. It may be safely estimated that the cost to be incurred under the pending bill will require double that amount—more than the entire sum expended in any one year in the administration of the second Adams. If the presence of agents in every parish and county is to be considered as a war measure, opposition, or even resistance, might be provoked, so that to give effect to their jurisdiction troops would have to be stationed within reach of every one of them, and thus a large standing force be rendered necessary. Large appropriations would, therefore, be required to sustain and enforce military jurisdiction in every county or parish from the Potomac to the Rio Grande.

The condition of our fiscal affairs is encouraging, but in order to sustain the present measure of public confidence it is necessary that we practice, not merely customary economy, but, as far as possible, severe retrenchment. In addition to the objections already stated the fifth section of the bill proposes to take away from its former owners without any legal proceedings being first had, contrary to that provision of the Constitution which declares that no person shall be deprived of life, liberty, or property without due process of law. It does not appear that a part of the lands to which this section refers may not be owned by minors, or persons of unsound mind, or by those who have been faithful to all their obligations as citizens of the United States. If any portion of the land is held by such persons it is not competent for any authority to deprive them of it. On the other hand, it is found that the property is liable to confiscation, even then it cannot be appropriated to public purposes until by due process of law it shall have been declared forfeited to the Government.

There is still further objection to the bill on grounds seriously affecting the class of persons to whom it is designed to bring relief. It will tend to keep the mind of the freedman in a state of uncertain expectation and restlessness, while to those among whom he lives it will be a source of constant and vague apprehension.

Undoubtedly the freedman should be protected, but he should be protected by the civil authorities, especially by the exercise of all the constitutional powers of the courts of the United States and of the States. His condition is not so exposed as may at first be imagined. He is in a portion of the country where his labor cannot be spared. Competition for his services from planters, from those who are constructing or repairing railroads, or from capitalists in his own vocation, or from other States, will enable him to command almost his own terms. He also possesses a perfect right to change his place of abode, and if, therefore, he does not find in one community or State a mode of life suited to his desires, or proper remuneration for his labor, he can move to another where that labor is more esteemed and better rewarded.

In truth, however, each State, induced by its own wants and interests, will do what is necessary and proper to retain within its borders all the labor that is needed for the development of its resources. The laws that regulate supply and demand will maintain their force, and the wages of the laborer will be regulated thereby. There is no danger that the exceedingly great demand for labor will not operate in favor of the laborer.

Neither is sufficient consideration given to the ability of the freedmen to protect and take care of themselves. It is no more than justice to them to believe that, as they have received freedom with moderation and forbearance, so they will distinguish themselves by their industry and thrift, and soon show the world that in a condition of freedom they are self-sustaining, capable of selecting their own employment and their own places of abode; of in-living for themselves on a proper remuneration, and of establishing and maintaining their own families and schools. It is earnestly hoped that instead of wasting away, they will by their own efforts establish for themselves a condition of respectability and prosperity. It is certain that they can attain to that condition only through their own merits and exertions. In this connection the query presents itself, whether the system proposed by the bill will not, when put into complete operation, practically transfer the entire care, support, and control of four millions of emancipated slaves to agents, overseers, or taskmasters, who appointed at Washington, are to be located in every county and parish throughout the United States containing freedmen and refugees. Such a system would inevitably tend to a concentration of power in the Executive, which would enable him, if so disposed, to control the action of this numerous class, and use them for the attainment of his own political ends.

I cannot but add another very grave objection to this bill. The Constitution imperatively declares, in connection with taxation, that each State shall have at least one Representative, and fixes the rule for the number to which, in future times, each State shall be entitled. It also provides that the Senate of the United States shall be composed of two Senators from each State, and adds, with peculiar force, "that no State, without its consent, shall be deprived of its equal suffrage in the Senate." The original act was necessarily passed in the absence of the States chiefly to be affected, because their people were then continuously engaged in the rebellion. Now the case is changed, and some at least of those States are attend-

"Liberty and Union, now and forever, one and inseparable."—DANIEL WEBSTER.

RALEIGH, N. C., WEDNESDAY,

FEBRUARY 28, 1866.

NO. 9.

TRIAL OF MAJOR JOHN H. GEE.

RALEIGH, WEDNESDAY, Feb. 21st, 1866.

The Court met at Department Headquarters, all the members present, as follows:

Colonel W. W. Wheeler, 28th Michigan Infantry.

Brevet Lieutenant Colonel John Hamilton, U. S. A.

Lieutenant Colonel R. K. Miller, 128th Indiana Infantry.

Brevet Major John R. Myrick, U. S. A.

Brevet Major P. S. Connor, U. S. A.

Captain John Corbin, 128th Indiana Infantry.

Captain Dwight Fraser, 128th Indiana Infantry.

Major Francis E. Wolcott, Judge Advocate.

Colonels D. P. Holland, of Florida, and John Wilder of Massachusetts, were introduced by the Judge Advocate, as counsel for the defense.

The Counsel for the defense stated that the prisoner, not having been put in possession of the charges and specifications against him, in definite form, yesterday, was not thoroughly prepared with his defense, and that he needed a reasonable time to send for witnesses and papers, if necessary, after the examination of witnesses for the prosecution should close, which request was acceded to by the Judge Advocate and the Court.

The charges and specifications were then read by the Judge Advocate, as follows:

CHARGES AGAINST JOHN H. GEE, LATE

KEEPER OF THE REBEL MILITARY PRISON AT SALISBURY, NORTH CAROLINA.

CHARGE I.

"Violation of the laws and customs of War."

Specification 1st.—In this, that John H. Gee, while being or claiming to be, a Major in the rebel military service, and as such being in command and charge of the prison established and used by the rebel government or military authorities, at Salisbury, North Carolina, for the confinement of prisoners of war, taken and held as such from the armies of the United States of America, and being in charge of a large number of such prisoners there assembled, feloniously, wilfully, and without cause, order, or guard, did, on or about the 16th day of October, 1864, maliciously and murderously give, as aforesaid, one of the said guards, whose name is unknown, did, with a musket loaded with gunpowder and bullet, then and there fire upon the said prisoners, inflicting upon one of the said prisoners, whose name is unknown, a mortal wound, with the musket aforesaid, of which he, the said prisoner, died, this at Salisbury, North Carolina, on or about the 27th day of October, 1864.

Specification 2d.—In this, that the said John H. Gee, while being or claiming to be, a Major in the rebel military service, and as such being in command and charge of the prison established and used by the rebel government or military authorities, at Salisbury, North Carolina, for the confinement of prisoners of war, taken and held as such from the armies of the United States of America, and being in charge of a large number of such prisoners there assembled, feloniously, wilfully, and without cause, order, or guard, did, on or about the 16th day of October, 1864, maliciously and murderously give, as aforesaid, one of the said guards, whose name is unknown, did, with a musket loaded with gunpowder and bullet, then and there fire upon the said prisoners, inflicting upon one of the said prisoners, whose name is unknown, a mortal wound, with the musket aforesaid, of which he, the said prisoner, died, this at Salisbury, North Carolina, on or about the 30th day of November, 1864.

Specification 3d.—In this, that the said John H. Gee, while being or claiming to be, a Major in the rebel military service, and as such being in command and charge of the prison established and used by the rebel government or military authorities, at Salisbury, North Carolina, for the confinement of prisoners of war, taken and held as such from the armies of the United States of America, and being in charge of a large number of such prisoners there assembled, feloniously, wilfully, and without cause, order, or guard, did, on or about the 16th day of October, 1864, maliciously and murderously give, as aforesaid, one of the said guards, whose name is unknown, did, with a musket loaded with gunpowder and bullet, then and there fire upon the said prisoners, inflicting upon one of the said prisoners, whose name is unknown, a mortal wound, with the musket aforesaid, of which he, the said prisoner, died, this at Salisbury, North Carolina, on or about the 16th day of December, 1864.

Specification 4th.—In this, that the said John H. Gee, while being or claiming to be, a Major in the rebel military service, and as such being in command and charge of the prison established and used by the rebel government or military authorities, at Salisbury, North Carolina, for the confinement of prisoners of war, taken and held as such from the armies of the United States of America, and being in charge of a large number of such prisoners there assembled, feloniously, wilfully, and without cause, order, or guard, did, on or about the 16th day of October, 1864, maliciously and murderously give, as aforesaid, one of the said guards, whose name is unknown, did, with a musket loaded with gunpowder and bullet, then and there fire upon the said prisoners, inflicting upon one of the said prisoners, whose name is unknown, a mortal wound, with the musket aforesaid, of which he, the said prisoner, died, this at Salisbury, North Carolina, on or about the 16th day of December, 1864.

Specification 5th.—In this, that the said John H. Gee, while being or claiming to be, a Major in the rebel military service, and as such being in command and charge of the prison established and used by the rebel government or military authorities, at Salisbury, North Carolina, for the confinement of prisoners of war, taken and held as such from the armies of the United States of America, and being in charge of a large number of such prisoners there assembled, feloniously, wilfully, and without cause, order, or guard, did, on or about the 16th day of October, 1864, maliciously and murderously give, as aforesaid, one of the said guards, whose name is unknown, did, with a musket loaded with gunpowder and bullet, then and there fire upon the said prisoners, inflicting upon one of the said prisoners, whose name is unknown, a mortal wound, with the musket aforesaid, of which he, the said prisoner, died, this at Salisbury, North Carolina, on or about the 16th day of December, 1864.

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Specification 17th.—In this, that the said John H. Gee, while being or claiming to be, a Major in the rebel military service, and as such being in command and charge of the prison established and used by the rebel government or military authorities, at Salisbury, North Carolina, for the confinement of prisoners of war, taken and held as such from the armies of the United States of America, and being in charge of a large number of such prisoners there assembled, feloniously, wilfully, and without cause, order, or guard, did, on or about the 16th day of October, 1864, maliciously and murderously give, as aforesaid, one of the said guards, whose name is unknown, did, with a musket loaded with gunpowder and bullet, then and there fire upon the said prisoners, inflicting upon one of the said prisoners, whose name is unknown, a mortal wound, with the musket aforesaid, of which he, the said prisoner, died, this at Salisbury, North Carolina, on or about the 16th day of December, 1864.

Specification 18th.—In this, that the said John H. Gee, while being or claiming to be, a Major in the rebel military service, and as such being in command and charge of the prison established and used by the rebel government or military authorities, at Salisbury, North Carolina, for the confinement of prisoners of war, taken and held as such from the armies of the United States of America, and being in charge of a large number of such prisoners there assembled, feloniously, wilfully, and without cause, order, or guard, did, on or about the 16th day of October, 1864, maliciously and murderously give, as aforesaid, one of the said guards, whose name is unknown, did, with a musket loaded with gunpowder and bullet, then and there fire upon the said prisoners, inflicting upon one of the said prisoners, whose name is unknown, a mortal wound, with the musket aforesaid, of which he, the said prisoner, died, this at Salisbury, North Carolina, on or about the 16th day of December, 1864.

Specification 19th.—In this, that the said John H. Gee, while being or claiming to be, a Major in the rebel military service, and as such being in command and charge of the prison established and used by the rebel government or military authorities, at Salisbury, North Carolina, for the confinement of prisoners of war, taken and held as such from the armies of the United States of America, and being in charge of a large number of such prisoners there assembled, feloniously, wilfully, and without cause, order, or guard, did, on or about the 16th day of October, 1864, maliciously and murderously give, as aforesaid, one of the said guards, whose name is unknown, did, with a musket loaded with gunpowder and bullet, then and there fire upon the said prisoners, inflicting upon one of the said prisoners, whose name is unknown, a mortal wound, with the musket aforesaid, of which he, the said prisoner, died, this at Salisbury, North Carolina, on or about the 16th day of December, 1864.

Specification 20th.—In this, that the said John H. Gee, while being or claiming to be, a Major in the rebel military service, and as such being in command and charge of the prison established and used by the rebel government or military authorities, at Salisbury, North Carolina, for the confinement of prisoners of war, taken and held as such from the armies of the United States of America, and being in charge of a large number of such prisoners there assembled, feloniously, wilfully, and without cause, order, or guard, did, on or about the 16th day of October, 1864, maliciously and murderously give, as aforesaid, one of the said guards, whose name is unknown, did, with a musket loaded with gunpowder and bullet, then and there fire upon the said prisoners, inflicting upon one of the said prisoners, whose name is unknown, a mortal wound, with the musket aforesaid, of which he, the said prisoner, died, this at Salisbury, North Carolina, on or about the 16th day of December, 1864.

Specification 21st.—In this, that the said John H. Gee, while being or claiming to be, a Major in the rebel military service, and as such being in command and charge of the prison established and used by the rebel government or military authorities, at Salisbury, North Carolina, for the confinement of prisoners of war, taken and held as such from the armies of the United States of America, and being in charge of a large number of such prisoners there assembled, feloniously, wilfully, and without cause, order, or guard, did, on or about the 16th day of October, 1864, maliciously and murderously give, as aforesaid, one of the said guards, whose name is unknown, did, with a musket loaded with gunpowder and bullet, then and there fire upon the said prisoners, inflicting upon one of the said prisoners, whose name is unknown, a mortal wound, with the musket aforesaid, of which he, the said prisoner, died, this at Salisbury, North Carolina, on or about the 16th day of December, 1864.

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Specification 24th.—In this, that the said John H. Gee, while being or claiming to be, a Major in the rebel military service, and as such being in command and charge of the prison established and used by the rebel government or military authorities, at Salisbury, North Carolina, for the confinement of prisoners of war, taken and held as such from the armies of the United States of America, and being in charge of a large number of such prisoners there assembled, feloniously, wilfully, and without cause, order, or guard, did, on or about the 16th day of October, 1864, maliciously and murderously give, as aforesaid, one of the said guards, whose name is unknown, did, with a musket loaded with gunpowder and bullet, then and there fire upon the said prisoners, inflicting upon one of the said prisoners, whose name is unknown, a mortal wound, with the musket aforesaid, of which he, the said prisoner, died, this at Salisbury, North Carolina, on or about the 16th day of December, 1864.